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August 21, 2007

To: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
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From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE

Pursuit of County Position on Legislation

County sponsored SB 134 (Cedillo), as amended on March 28, 2007, would authorize employees of the Sheriff's Department hired prior to April 1, 1997, to remain employed after reaching the age of 60. Employees seeking to continue employment beyond age 60 would be required to undergo a work-fitness evaluation by a County physician.

Our Sacramento advocates report that the California Professional Firefighters successfully submitted a hostile amendment to the bill on June 28, 2007 to exempt County firefighters, including the Fire Chief, from the mandatory retirement age. Under the terms of the amendment, public safety employees of the Fire department would be able to continue employment upon passage of the physical fitness test included as part of an existing departmental MOU Wellness/Fitness for Life program. Firefighters successfully participating in the program receive a three percent salary bonus.

Since June 28, there have been numerous meetings and discussions among representatives of the author's office, the California Professional Fire Fighters (CPF), our Sacramento advocates, the Sheriff's Sacramento advocate, and Chief Executive Office staff from Risk Management, Employee Relations, and Intergovernmental Affairs and External Relations to address the concerns raised below by CEO Risk Management and Employee Relations staff.

CEO Risk Management and Employee Relations staff indicates that the reference to the MOU is tantamount to the adoption of the Fire Fitness for Life Program as the work-fitness standard. This interpretation severely limits Board discretion. Employee Relations (ER) recommends opposition to any reference, however indirect, to a negotiated fitness for life in the legislation. In ER's view, the term has no legal meaning and it does not want to be locked into some fitness for life practice by law. Furthermore, ER indicates that the Wellness/Fitness program is subject to review by the CEO to evaluate its effectiveness. It is possible that the program may not be continued after 2008.

CEO Risk Management staff advises that they are concerned that the new language could force the County to negotiate medical standards, which by law, must be job-related and based on the best available medical evidence. Medical work fitness evaluations, especially on older safety employees with long work histories and multiple permanent disabilities through workers compensation, would be very complex and difficult. It may not be possible to draft and negotiate standards that would cover every possible permutation of every possible medical condition.

The County was successful in reaching an agreement with the CPF on an amendment which also would allow fire fighters to remain employed after the age of 60 if a physician employed by the County or approved by the County certifies that the safety member is capable of performing his or her assigned duties pursuant to standards set forth by the member's employer. All references to the MOU will be removed from the bill. Another section of the legislation, which was not amended, stipulates that the bill shall not become operative until a resolution to that effect is adopted by a majority vote of the Board of Supervisors. **Therefore, the County will continue to sponsor SB 134, as proposed to be amended, and our Sacramento advocates will work for its successful passage.**

SB 275 (Cedillo), as amended on July 2, 2007, would prohibit hospitals from transporting patients to locations other than the patient's residence without their explicit consent. Hospitals in violation of this requirement would be subject to administrative and civil penalties. A third violation would be punishable as a misdemeanor. The residence of a homeless patient is defined as the location given to the hospital by the patient as his or her principal dwelling.

In a recent Assembly Public Safety Committee analysis, the author indicates that the intent of SB 275 is to deter hospitals from transporting a homeless patient without consent to a location other than a residence that might pose a greater risk to the patient. The County shares Senator Cedillo's interest in ensuring the appropriate and safe discharge of homeless patients. The protocols established by the County Department of Health Services (DHS) for the discharge of the homeless and patients without stable funding include the development of a comprehensive discharge plan for each individual. Homeless patients are discharged to a variety of settings depending on their needs, including shelters, skilled nursing facilities, substance abuse treatment programs, and community social services agencies.

County advocates have worked closely with Senator Cedillo's staff to address the County's concerns with SB 275. These efforts have produced an agreement with the author to

replace language that would have required a standard for patient consent that would be nearly impossible for hospitals to achieve with much clearer consent language which is currently used in many other areas of existing law.

However, DHS continues to have a serious concern about the provisions of SB 275 which would subject hospitals to the possibility of criminal sanctions. The Code of Federal Regulations indicates that entities convicted of criminal offenses must be denied payment under Medicare and Medi-Cal for a minimum of five years. A hospital convicted of a misdemeanor under this bill would lose millions of dollars of Federal financial support, potentially resulting in the closure of that facility and causing further erosion of an already fragile emergency and trauma care system. County Counsel agrees that the potential penalties for violation of the Code of Federal Regulations appear to be very severe.

DHS also indicates that SB 275 inadvertently applies the requirement to obtain consent for transportation upon discharge to all patients instead of limiting this requirement to the homeless. Further, the issue of homeless patients is complex, and SB 275 does not deal with the underlying issue of the availability of space in appropriate facilities for homeless patients after they no longer need acute hospital care. This forces hospitals to assume a disproportionate share of responsibility for this aspect of the homeless issue, and it should be the subject of future legislation.

Opposition to SB 275 unless amended to no longer subject hospitals to criminal sanctions, and to limit the consent requirement to homeless patients, is consistent with the Board's opposition to legislative policy that could result in reductions in funding for the health care safety net. **Therefore, our Sacramento advocates will oppose SB 275 unless amended to remove criminal sanctions and to limit its application to homeless patients.**

SB 275 is sponsored by the City Attorney of Los Angeles and supported by the California Nurses Association; Union Rescue Mission; Loaves and Fishes; the Mayor of the City of Los Angeles; City of Sacramento; American Federation of State, County and Municipal Employees; and Protection and Advocacy, Incorporated. The bill is opposed by the California Hospital Association and the Hospital Association of America. SB 275 was placed on the Assembly Appropriations Committee's suspense file on July 18, 2007.

We will continue to keep you advised.

WTF:SRH:GK
MAL:DD:IGA:acn

c: All Department Heads
Legislative Strategist
Local 721
Coalition of County Unions
California Contract Cities Association
Independent Cities Association
League of California Cities
City Managers Associations
Buddy Program Participants